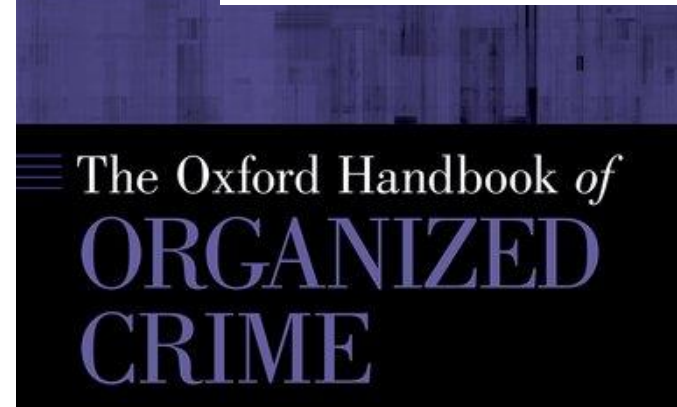
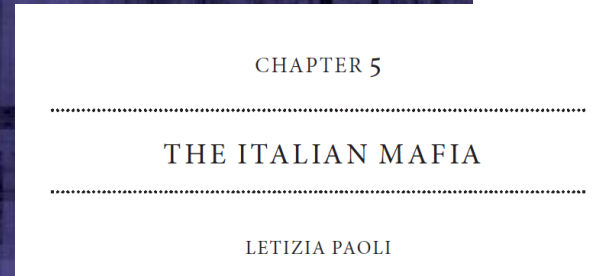
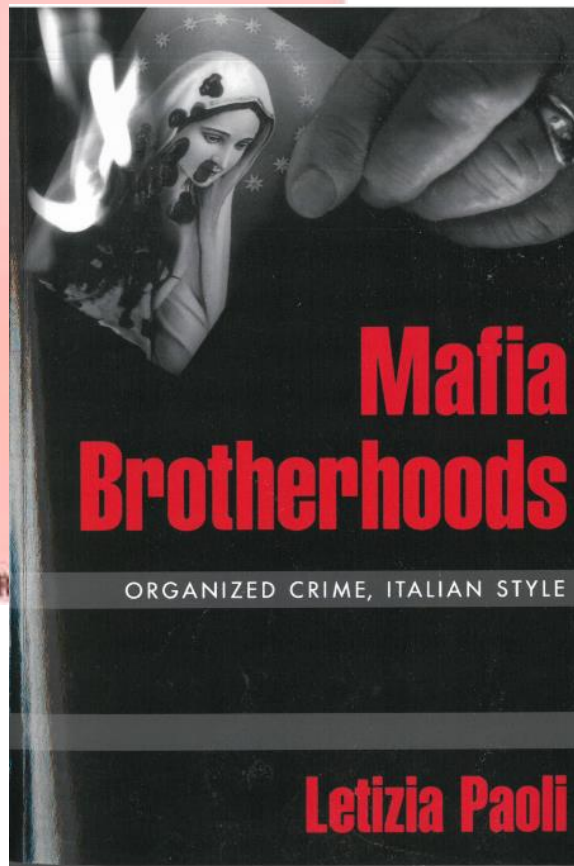


HONOR CODES AS ALTERNATIVE LEGAL ORDERS THE CASE OF ITALIAN MAFIA ORGANIZATIONS



Prof. Dr. Letizia Paoli, University of Leuven

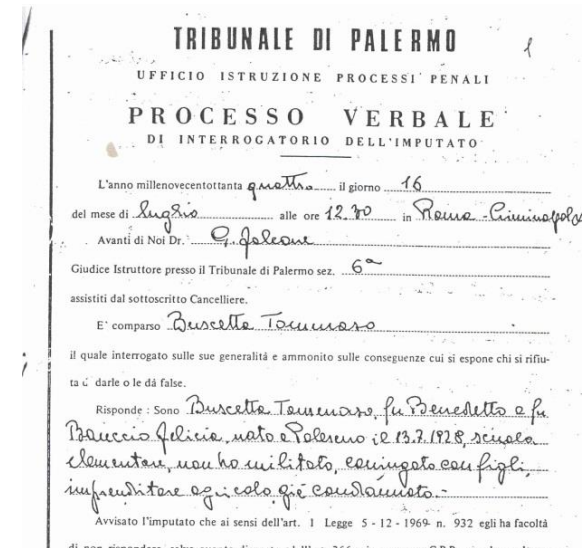
International Conference “Honour and the Law,” Leuven, 25-26 February 2015



Multiple sources, but preference for mafia witnesses' statements



Pentiti describe mafia world “not only from the outside but also from within”





Outline

- Cosa Nostra, 'Ndrangheta and other mafia-type organizations
- The centrality of honor
- Mafia “legal orders”
- Two challenges to mafia power (and legal orders)
- Conclusions: two points in common and two parallels





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Mafia v. organized crime

- Four characteristics distinguish Cosa Nostra and 'Ndrangheta from other organized crime actors
 1. Longevity
 2. Organizational and cultural complexity
 3. Claim to exercise a political dominion over areas of settlement
 4. Resulting ability to control legitimate markets

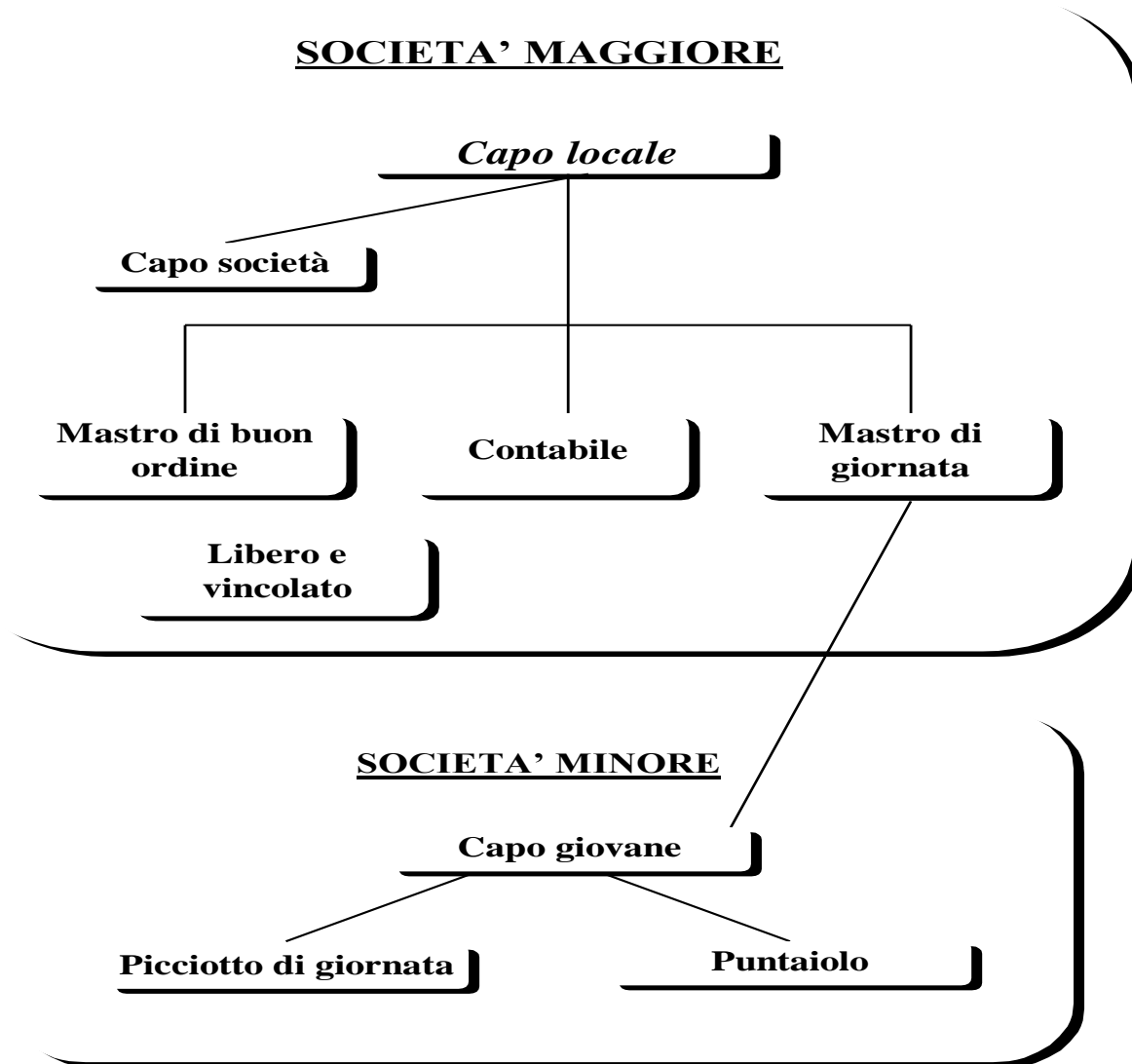


Cosa Nostra and 'Ndrangheta: structure

- Both are consortia of about 150 groups
 - Cosa Nostra has about 2,000-3,000 ritually affiliated members
 - 'Ndrangheta up to 10,000
- Groups (“families”) and consortia have own ruling bodies
 - Unity is guaranteed by sharing of cultural codes and organizational formula >> segmentary societies
- In other contexts “disorganized crime” (Reuter, 1983) prevails



Ruling bodies of an 'Ndrangheta group



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- A few other “mafia-type” organizations worldwide
 - I.e., Chinese Triads, Japanese Yakuza, American La Cosa Nostra, Russian thieves-in-law



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Men of honor, honored societies

- Mafia groups impose pre-modern, life-long “status contract” (Weber, 1922) on members
 - No well-defined duties or rewards
- Initiation ceremony is rite of passage and institution: members become “men of honor”
- Code of honor was long shared by broader population
 - Despite different connotations, core is self-defence



Status contracts also entail fraternization

- Mafia initiation ceremony establishes ritual kinship
 - Ritual fraternization was key institution until Middle Ages
 - Mafiosi are bound
 - To consider other members as brothers
 - To subordinate all allegiances to mafia membership
 - Contracts create trust and solidarity among non-kin and give bosses extraordinary flexibility in short-term
 - Also generate ethical dualism and individuals' deresponsibilization
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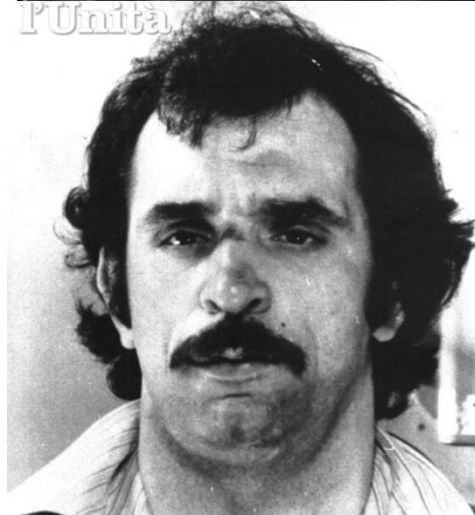
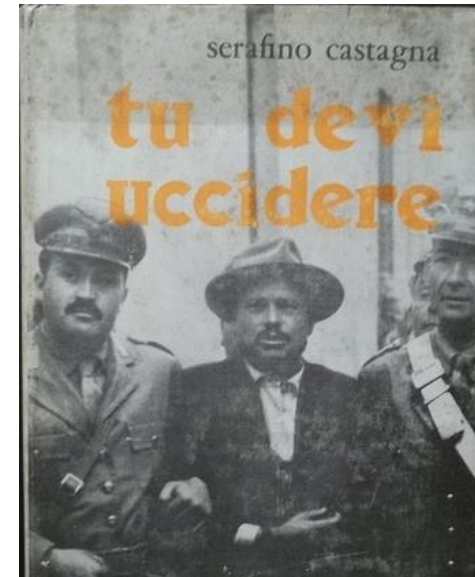



The mafia “deal”

- “The interests and honor of the association come before those of your family, parents, sisters, and brothers. The association is your family from now on and, if you commit *infamità* [that is, betraying or endangering the group], you will be punished with death. As you are faithful to the society, in the same way the society will be faithful to you and will help you in times of need. This oath can be broken only with death. Do you accept all this? Will you swear to it?” (Procura della Repubblica di Reggio Calabria, 1995).


Mafiosi (used to) take mafia initiation ceremony very seriously

- Serafino Castagna, former 'Ndrangheta member:
 - “At the end of the meeting, I felt as if I had grown in stature; I was no longer a nobody, but a *camorrista*, somebody who had to respect the law of honor and to ensure that it was respected by others” (1967)
- Cosa Nostra defector, Gaspare Mutolo:
 - “When I became a member, it was for me a new life, with new rules. For me, only Cosa Nostra existed” (1993)





A precarious balance between *Gemeinschaft* and *Gesellschaft*

- Mafiosi usually presented as profit-maximizing entrepreneurs in criminological literature
 - In reality, combination of instrumental and solidary relationships
 - Status and fraternization contracts are source not only of strength but also of weakness
 - Can be imposed only on persons socialized to specific values
 - Growing contradiction between contract value system and *mafiosi's* concrete activities
- 



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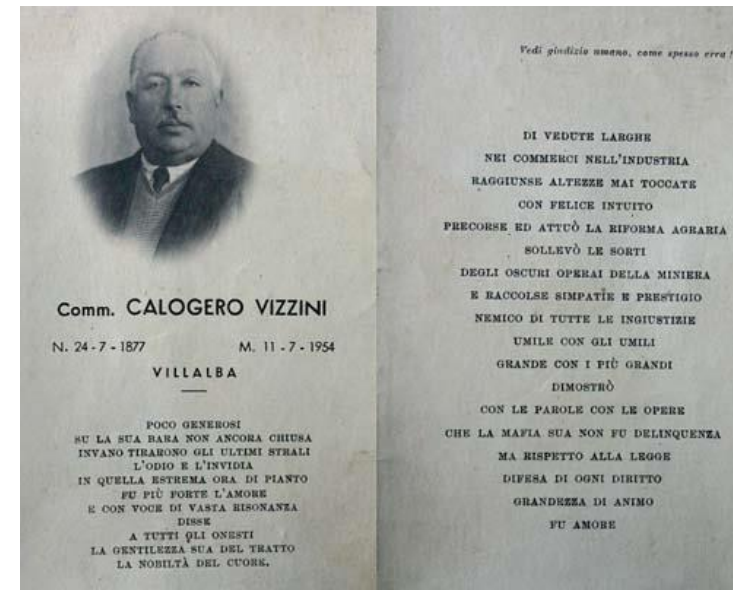


Truly alternative legal orders

- Neither legal positivism nor pluralism are good starting points
- Two mafia organizations claim autonomy and self-sufficiency of own legal orders
 - # different from normative systems of other secondary groups
- Mafia legal orders include both “rules of primary and secondary type” (Hart, 1994)
 - Rules of primary types often inspired by honor
 - Only embryonic rules of recognition and change
 - Clear rules of adjudication since 19th century
 - Differentiated set of sanctions, including shame


Claim to exercise political dominion

- Mafia groups aim(ed) to impose legal orders also on outsiders
- Claim political dominion over specific territory
 - Town, village or neighbourhood in larger cities
- Mafia power long had higher degree of effectiveness and legitimacy than governments





Mafia dominion long accepted by state

- “In practice, the relationships between the institutions and mafia took place, for many years, in the form of relationships between two distinct sovereignties: neither would attack the other, so long as each remained within its own boundaries. . . . The state attacked only when the Cosa Nostra attacked and after that it would go back to coexistence” (Parliamentary Anti-mafia Commission, 1993)
- 


Contemporary manifestations of mafia political ambitions

- “Tax” local productive activities
- Mediate conflicts and guarantee property rights, if asked
- Have allies among local politicians, control local life
 - Since 1991 over 200 city councils dismissed because of mafia infiltrations, including Reggio Calabria
- Share favours with national politicians
- Kill or intimidate “dangerous” state representatives
 - Cosa Nostra even involved in terrorist attacks






Mafia groups as proto-states

- “Sicily’s problem is not a shortage, but a surfeit, of government. ... If one mafia network managed to extend its control all over Sicily, all concerned would begin to describe its actions as ‘public’ rather than ‘private,’ the national government would have to come to terms with it, outsiders and insiders alike would begin to treat its chiefs as the legitimate authority. It would be a government; it would resemble a state. With outside recognition of its autonomy, plus the development of differentiated and centralized instruments of control, it would *be* a state” (Tilly, 1988)
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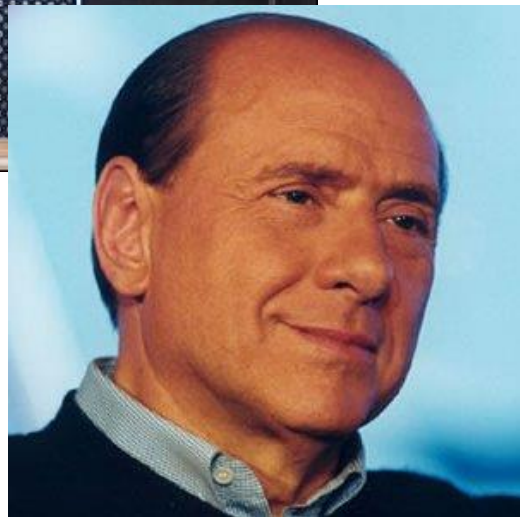
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Two challenges

- Declining acceptance of honor code in broader society as a result of modernization
- Declining tolerance of alternative proto-states, sharp increase in anti-mafia repression since 1992
 - All Cosa Nostra chiefs and many 'Ndrangheta bosses captured
 - Thousands of other *mafiosi* also arrested and convicted
 - Many sent to very harsh special incarceration regime
 - Financial drain also very severe
 - Several state protectors also investigated and convicted





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Two points in common

- Momigliano's approach:
 - Law, including mafia legal orders, is product of the society and culture of its time
- For justice outcomes, honor is double-edged sword
 - Good in case of “levelling up”
 - Bad in case of persistence of status distinctions and “levelling down”

Two parallel developments

- Substitution of honor with wealth as in-group differentiation criterion
 - Equality: “monstrous fiction” (Burke, 1790)?
- Persistence of status differentiation and ethical/legal dualism vis-à-vis outsiders
 - Non- EU/US-citizen, non-human being?

